



CLINICAL LEGAL EDUCATION

Reply to:

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MESSAGE FROM THE CHAIR
BY
SUSAN BRYANT

The integration of theory and practice is one of the goals of clinical education. This integration is difficult enough to bring about in the clinic and I wonder how much of what is learned is used after graduation. In the clinic, the students can integrate the theories they are learning with their work as lawyers. We design the clinic environment so that this can happen and we reward students with praise and even grades when they achieve this integration. Many of the theories that we teach the students represent a critical perspective of the profession and offer some different ways of lawyering. Will the student carry this critical perspective into their work as lawyers when they graduate or will they dismiss their law school clinical experience as irrelevant to the "real" practice of law? One example- many clinicians teach a theory of decision-making which is non-hierarchical and tries to demistify the law and the legal process so that clients can make informed judgements. Have we had a meaningful impact on the profession on this issue? Do our students relate to clients differently than students who have not had clinical training? How can we learn about this?

Although many students recognize that the clinic was the most relevant course in law school, the professional socialization which occurs after law school makes the semester-long clinical program seem a short time period in which to develop values and theories about lawyering which will have a lasting impact on our students. I rarely discovered how many of my students resolve the dissonance between theory and practice because I did not talk to the students while they are experiencing this dissonance after graduation. Many of our students learn how to practice in clinical programs with extremely low caseloads and graduate to practice in small law firms, legal aid and legal service offices with extremely high caseloads. How does the new

lawyer translate the learning of the clinic and the theories about lawyering to these situations. I teach the students to do everything possible in a case without regard to time and, in some cases, money resources. The theory is that they should know the world of possible ways to proceed and when they graduate they can intelligently cut corners when that is required by their practices. I am no longer confident that someone starting out in the profession can do this. I am not advocating that we go back to high caseloads or that we mimic in our clinics the worst of the profession so that we can get our students used to it. I do think that we need to explicitly address the ways which the clinic and the lawyering theories we teach are different from the real world and to help our students to think about the dissonance they will soon experience. We also should discuss with them ways to set priorities and make judgements when they work in worlds that have fewer resources.

Continuing Legal Education Programs and Field Placement Programs both offer opportunities for faculty and students to examine the degree of dissonance between theory and practice. Contact with lawyers in CLE programs and field placement programs allows us to critically examine the viability of our theories about practice. When we engage other practitioners or our students in discussions about our theories we can examine their viability in practice. We can help the student to see how they might put them into practice in a profession that does not regularly put these theories into practice. Faculty supervised-field placement programs permit the student to experience the socialization process in the real world and reflect on that experience with a faculty member in feedback. This feedback allows the student to examine his/her relationship with the field supervisor to see whether the student uncritically accepts the way law is practiced in the field. CLE programs for former students are another way to test whether our students are integrating what they learned in the clinic with what they are doing in practice.

The possible benefits of field placement and CLE programs with prior students assume that the student has been taught theories about lawyering which can be integrated into practice. However, many students never take a clinical program. CLE programs can be especially important for new lawyers who have had little formal training in the practice of law. Many clinicians have participated in litigation courses like NITA; other CLE programs in interviewing, counseling and negotiation, and mediation are beginning to be offered by various bar associations and government agencies. The sections committee on CLE programs welcomes any ideas you might have for interesting CLE work which could be communicated to other clinicians. You can contact Steve Emens at Alabama, the chair of this committee, if you have any ideas or information.

This past semester I taught a 16 credit course which is described later in this newsletter. The experiential learning part of the course was a field work in various public interest offices. As a in-house clinician I struggled with this model for a semester, I kept trying to make it be a clinic and kept finding that it failed. Once I let go of the desire that this course be a clinic and let it be something else with other goals, I found that a field placement program can be a valuable learning experience for the student. I think for students who have had three semesters of theory as our students at CUNY have had in their simulation work, a field based program offered the students and the faculty a way of testing the models of lawyering we were teaching to see if the theories could be put into practice. We are planning to offer in-house clinical programs to our third year students.

Just to prove that a field placement clinic is no less work, I am writing this chairperson's note at the end of July long after the June 15th deadline set by Peter Hoffman. I apologize for the delay; you can expect the next issue sometime at the end of October or the beginning of November.

CLINICIAN READS FOR ELDERLAW

by Sue Bryant

Last May I was asked by the Legal Services Corporation to read grant applications for the Elderlaw program. The readers for the grant applications included three readers from outside the Corporation and four readers regularly employed by the Corporation. The outside readers included one reader from a local office, one reader who specialized in representing the elderly and one clinician. Although the past LSC clinical experience program readers included Mr. Bill Pincus, several clinicians criticized the Corporation for failing to include a line clinician as part of the team of readers. The Corporation's goals for the elderlaw project included both service and educational goals. My role was to point out which programs met those goals and which did not by trying to identify which programs were properly supervised and which were not. Unlike reading for Title IX where the readers are almost exclusively clinical teachers who share a common language and common criteria for evaluating programs, the readers for elderlaw brought different criteria and interpretations to the same criteria to their reading. I think that it is an important part of our work to continue to be involved in reading for legal service grants; I would encourage the Corporation to use more outside readers and more clinical teachers in their grant application process.

BITS AND PIECES

ABA SKILLS TRAINING COMMITTEE HAS BEEN ACTIVE

by
Roy Stuckey, South Carolina

The Skills Training Committee of the ABA Section of Legal Education and Admissions to the Bar has been actively working on a host of issues of interest to clinicians. Although the 1984-85 committee was not appointed until January, it has met twice this Spring (March 30th - 31st in Indianapolis and May 15th in Washington), and it plans to meet again in Washington on July 8th. The members of the committee are: Marilyn Yarbrough, Kansas, chair; Roy Stuckey, South Carolina, vice-chair; Gary Palm, Chicago; Carrie Menkel-Meadow, UCLA; Dean John Roberts, Wayne State; Dean Nina Appel, Loyola-Chicago; and Herbert Fishbone, Esq. Their terms expire during the ABA Annual Meeting in July.

The Council of the Section acted on two of the committee's recommendations during its meeting on May 18, 1985:

1. Field Studies Project: A small committee will be appointed to work with Jim White and Fred Franklin of the ABA to identify funds, procedures, and the principal investigator for a project to identify and conduct field studies of those programs at approved law schools which have significantly augmented and enhanced the typical law school core curriculum (e.g., trial advocacy instruction, negotiation, interviewing and counseling theory, and skills). The project will also prepare and disseminate 1) detailed descriptions of the content and format of such programs, 2) evaluative comment as to the effectiveness thereof, and 3) cost analysis of such programs.

This action began with a recommendation of the Foulis Committee and was followed by the ABA House of Delegates, in February, 1981, recommending that the Section undertake the project. On May 20, 1981, the Clinical Legal Education Committee of the Section (which later became the Skills Training Committee) encouraged the Section to undertake the project and suggested that it should take 18 months, directed by one full-time person for one academic year, secretarial support, plus funds for extensive travel (up to 30 schools), etc. It also recommended that an advisory committee of five persons be created to oversee the project.

At its meeting in May, 1981, the Council rejected the committee's proposal, acting on the belief that the information could be provided from the data collected by the annual law school questionnaires and a summary of the information from site inspection reports. History has proven this belief to be erroneous. Therefore, the present Skills Training Committee reissued the 1981 committee's recommendation and the Council has now accepted it.

2. 405 (e) Monitoring: A questionnaire seeking information about the status of clinicians and plans for the future will be mailed to all ABA accredited and AALS member law schools in the near future. The survey will probably be undertaken as a joint project of the AALS and the ABA Section on Legal Education and Admissions to the Bar.

In helping prepare the survey, the Skills Training Committee was forced to confront some difficult definitional problems. It ultimately decided to encourage consistency in terminology by using "professional skills instruction" instead of "clinical legal education" or other alternatives. This is consistent with ABA Accreditation Standards 405(e) and 302(a). It also decided to adopt with minor changes the language used in the Guidelines for Clinical Legal Education in defining "programs for professional skills instruction" (substituting for "clinical legal studies").

The definitional part of the instructions which are expected to accompany the survey are set forth below:

"Faculty," "professional skills program," and "primary responsibilities" are defined as follows for the purposes of this survey. Careful adherence to these definitions is important.

Faculty: Those persons who devote substantially all of their time as employees of the law school to teaching and/or scholarship.

For purposes of this questionnaire, include all clinical professors, lecturers, instructors, and visitors, even if they have no faculty vote, hold short term appointments or are not expected to produce scholarship.

Do not include anyone whose primary teaching responsibilities are in the first year legal writing and research courses.

Do not include anyone working toward an advanced degree at the law school while engaged in teaching and/or scholarship.

Professional Skills Program: A "professional skills program" is that portion of a law school's curriculum in which student performance in lawyering roles is paramount. The teaching of "professional skills" involves teaching and evaluating law student performance on live cases or problems, or in simulation of the lawyer's role, for the mastery of basic lawyering skills, and the better understanding of the professional responsibility, substantive and procedural law, and the theory of legal practice.

This definition encompasses a broader range of courses than some people would normally associate with the term. This is intentional.

However, some care should be taken not to apply the definition too broadly. The following guidelines might be helpful in deciding close questions.

Courses carrying titles clearly connected with professional skills, such as "trial practice" or "interviewing," should be included even if they are 100% lecture courses with no performance or problem solving component. Law office management courses should not be included. Professional Responsibility should not be included.

Any -- course in which students are involved in client representation should be included (i.e., all clinics, including placements and externships.)

Although a course involves student performance, it may not be appropriate to include it. For example, a Corporations course might use simulations or problem-solving exercises. However, most such courses should not be included because the primary purpose of the skills tasks would be to enhance students' understanding of the underlying substantive law. Skills would be of secondary importance, usually negligible.

However, if skills instruction is a significant educational goal of the course, it might be appropriate to include it. One test would be whether or not materials related to skills instruction are required for the course.

Drafting courses after the first year such as estate planning or pleadings practice should be carefully considered for inclusion. The presumption should be to include them unless it is felt that the drafting skills learned are a minor part of the course.

Primary Responsibilities: One test for deciding close cases would be to consider whether or not that person would be a member of the faculty if the school had no professional skills program.

The survey is expected to reach the Deans sometime this Summer. It will seek information about both the 1984-85 and the 1985-86 academic years. Clinicians at each school should get involved in answering the questionnaire to ensure maximum accuracy and rate of return.

The Committee is working on a number of other projects, which it hopes to finish during its July 8th meeting:

ABA Annual Questionnaire: The questions dealing with clinical education were written about a decade ago. The committee has already reviewed the Questionnaire to make the terminology consistent with 302(a), 405(e) and the forthcoming questionnaire. In July, the committee intends to review the substance of the questions and make recommendations for improvements. It is believed that some of the information being gathered is relatively worthless, while other more important data is not being sought at all.

National Negotiation Competition: The Law Student Division of the ABA sponsored a pilot negotiation competition last year which it is now seeking to institutionalize. The ABA Board of Governors has approved the competition with the stipulation that the LSD request programmatic approval by the Section of Legal Education. The Section's Council has referred it to the committee for review.

Placement Clinics/Pay for Student Work/Instructions for Site Inspections: A continuing agenda item for the committee has been the task of developing guidelines and a model plan for externships and clerkships. (This originated as a recommendation of the ABA Task Force on Professional Competence.)

The Committee expects that the report of the field studies project described earlier will include adequate descriptions of model placement clinics. Meanwhile, the Skills Training Committee is trying to develop guidelines for placement clinics. There are pressures to do this quickly from two sources.

One has evolved indirectly from the continuing debate over whether or not students should be allowed to receive pay for the work they do in placement clinics. There was a specific proposal to allow this which was considered by the ABA House of Delegates a couple of years ago. Its defeat in the House turned in part on the fact that waivers from the prohibition against pay can be granted by the Council.

Since then, there have been a number of requests for waivers, and the Council and the Section's Accreditation Committee have been searching for appropriate criteria to apply in deciding whether to grant or deny them. A threshold issue is whether or not the programs in question otherwise comply with Accreditation Standard 306 (this governs all off campus programs for credit).

In order to assess programs consistently and fairly, guidelines would be helpful. A subcommittee of the accreditation committee has been created specifically to address this issue, and the Skills Training Committee is coordinating closely with it.

The second source of pressure to act quickly stems from the ABA site inspection process, and this raises broader questions. Every ABA accredited law school is visited by an inspection team at least every seven years. Law Schools are now required to provide instruction in professional skills (standard 302(a)(iii)). Therefore, every site inspection report should include an evaluation of whether or not this standard is being met and how well. Thus, the teams should collect information about placement clinics, as well as all other aspects of a school's program for professional skills instruction.

Instructions must be provided to improve thoroughness and consistency. These should be concise and easy to understand, as well as reasonable yet thorough. With regard to professional skills instruction, this presents an almost impossible challenge and requires regular reevaluation to keep pace with changes. The Skills Training

Committee is reviewing the current instructions and expect to recommend some ways to improve them.

Many other topics have been recommended for the committee's attention, which may or may not be discussed during its July meeting. These include:

- Creating a list of those courses which should count under 302(a)(iii) as professional skills courses (e.g., arguments both ways exist for professional responsibility courses).
- How to define an appropriate workload for a professional skills teacher?
- How to evaluate a professional skills teacher's performance, particularly one-to-one teaching?

Anyone with helpful information or opinions about the committee's agenda should contact any member of the committee. Suggestions for additional projects to undertake (and offers of help) will be noted and passed on to the 1985-86 Committee.

Clinicians Invited to Meet
While in Washington
for ABA

Any clinician who is interested in the issues being discussed by the ABA Skills Training Committee is invited to attend an unofficial, informal meeting being organized by Roy Stuckey. The primary purpose of the meeting is to gather input from a broader group of clinicians before the committee's next meeting on July 8th.

Tentative plans are to gather in the main lobby of the Sheraton Washington Hotel at noon on Sunday, July 7th. Roy can update you on the final plans. (At (803) 777-2278 through July 3rd; at Holiday Inn on Thomas Circle, July 6-9.)

TITLE IX AWARDS MADE

The United States Department of Education has announced the recipients of grants under the Law School Clinical Experience Program for the 1985 fiscal year. \$1,350,758 will be distributed with the average grant being \$30,000. Forty-four schools out of 64 applying received grants. The schools receiving grants are:

American	Delaware
Antioch	Drake
Arkansas-Fayetteville	Franklin Pierce
Brooklyn	Georgetown
Chicago	Georgia State
Cleveland State	Gonzaga
Columbia	Hamline

Hofstra
Idaho
IIT-Chicago Kent
Inter American
Kansas
Lewis & Clark
Loyola-Los Angeles
Maryland
Michigan
Nebraska
New Mexico
North Carolina
Northwestern
Richmond
Puerto Rico

Rutgers-Newark
Saint Louis
San Diego
Santa Clara
SMU
Stanford
Suffolk
SUNY-Buffalo
Vermont
Washburn
Washington
West Virginia
Western New England
Wisconsin
Yeshiva

ALLIANCE FOR JUSTICE PUBLISHES NEWSLETTER

The Alliance for Justice, an advocacy group for public interest law, has started publishing a quarterly newsletter, Pipeline. The newsletter contains information about public interest litigation, congressional and White House action affecting the public interest, and methods of expanding the impact of public interest groups. The subscription price is \$15 payable to the Alliance for Justice, 600 New Jersey Avenue, NW, Washington, D.C. 20001.

LSC ALSO PUBLISHES NEWSLETTER

The Legal Services Corporation Office of Field Services has also started a newsletter, Law School Bulletin, designed to keep members of the legal education community informed about LSC's involvement with law schools across the country. In particular, the newsletter will concentrate on LSC's research and programmatic involvement with law school clinic's, especially the Law School Civil Clinical Project and the Elderlaw Project. The first issue of the newsletter, May, 1985, contained a response to several articles in this, the AALS Clinical section Newsletter, which were critical of LSC's creation of the Law School Civil Clinical Project.

The Law School Bulletin can be obtained free of charge from the Office of Field Services, Legal Services Corporation, 733 Fifteenth St. N.W., Washington, D.C. 20005.

UCLA CONFERENCE CALLS FOR PAPERS ON CLINICAL EDUCATION

UCLA and the University of Warwick, are sponsoring an International Conference on Lawyering, the Legal Profession and the Legal Process to be held October 24-26, 1986 at the UCLA Conference Center at Lake Arrowhead, California. The conference will be followed by a two day program at the UCLA law school with presentations about the clinical programs at UCLA and Warwick. The deadline for

submitting proposals for papers to be presented at the conference was May 30, 1985.

Further information about the conference may be obtained from Assistant Dean Susan Gillig, UCLA School of Law, 405 Hilgard Ave., Los Angeles, CA 90024.

CHANGES AT SOUTH CAROLINA

Jim McGovern has resigned from his position at South Carolina to take a job in Columbia as house counsel with a company which produces software for insurance companies.

Official plans are not set, but there is a likelihood that the school will search for a permanent replacement during the 1985-86 academic year. In the meantime, there is a possibility that the vacancy can be used to provide a clinical teacher an opportunity to visit for one or both semesters next year. Roy Stuckey can provide more information, (803) 777-2278.

ATTENTION: SOCIAL SECURITY DISABILITY CLINICS

The Social Security Disability Reform Act of 1984 mandated, inter alia the creation of an ad hoc commission to study the effects of pain in determining a claimant's eligibility for Title II or Title XVI disability benefits. The commission which held its first meeting May 1 includes 20 people mostly doctors specializing in the treatment of chronic pain. The panel also includes three lawyers including David Koplow, a clinician at the Center for Applied Legal Studies at the Georgetown University Law Center. The Commission is scheduled to issue a report describing how the disability standards ought to deal with the issue of pain. The report is to go to the Department of Health and Human Services in September and to Congress in December. Any clinicians with comments or ideas on the subject, or with particular case examples of appropriate or inappropriate treatment of allegations of disabling pain, are urged to contact Dave Koplow at CALS, 605 G St. NW, Suite 300, Washington, D.C. 20001, (202) 624-8311.

SHORT STUFF

Roslyn Lieb has left Northwestern and is now the Executive Director of the Chicago office of the Lawyers' Committee for Civil Rights Under Law.

Bob Doyle (formerly of Mississippi), having completed graduate work at Wisconsin, will be the new Director of Clinical Education at Mercer.

David Binder, UCLA and Joe Harbaugh, American were speakers at the International Conference on Legal Skills Training sponsored by the Association of Continuing Legal Education Administrators and held July 1-3 in Washington, D.C.

Carrie Menkel-Meadow, UCLA was the featured faculty member at a program entitled Successful Legal Negotiations presented by the Center for the Study of Dispute Resolution, University of Missouri-Columbia School of Law. The program was held on March 8 in Columbia, Missouri.

JOB

Brooklyn

Brooklyn Law School is accepting applications for the position of full-time clinical instructor. The appointment is for twelve months beginning in August, 1985.

The clinical instructor will be responsible for assisting with the supervision of 16 second and third year students who represent litigants in the federal district courts under the student practice rules, as part of the law school's Federal Litigation Program. The instructor also will participate in the teaching of the seminar component of the program, which concentrates on federal jurisdiction and lawyering skills.

Applicants should have at least three years litigation experience, some in federal courts; preferably a familiarity with civil rights, discrimination, and/or disability benefits law; and a strong academic record.

Applications should be submitted as soon as possible to:

Professor Minna J. Kotkin
Director, Federal Litigation Program
Brooklyn Law School
250 Joralemon Street
Brooklyn, New York 11201

Minnesota

The University of Minnesota Law School is seeking applicants for three to five clinical positions. Responsibilities include the supervision of law students in various civil or criminal clinical programs and classroom instruction on lawyering skills such as interviewing, negotiation and trial preparation. These positions, which commence July 1, 1986, are in the University's Academic Professional and Administrative Class. Initial appointments will be made for a three year period and may thereafter be renewed or made permanent. Salary will be commensurate with background and experience.

Minimum qualifications include a J.D. degree, two years of legal practice and, by July 1, 1986, admission to the Minnesota bar. Applicants with law school clinical teaching or similar experience in supervising the work of attorneys are preferred.

The University of Minnesota is an equal opportunity educator and employer and specifically invites and encourages applications from women and minorities. Applications should be sent to Professor Laura Cooper, University of Minnesota Law School, 229 Nineteenth Avenue South, Minneapolis, Minnesota 55455. (Phone: (612) 373-4841) and must be received by October 31, 1985. Applications should include resume, law school transcript, description of relevant experience and the names of two references.

Stetson

POSITION: Visiting Assistant Professor

DESCRIPTION: Stetson University College of Law has received a two year grant from the Legal Services Corporation to establish a civil clinic and course material relating the special legal needs and problems facing low income elderly clients.

RESPONSIBILITIES: .Develop material and curriculum for a course covering the legal problems and needs of the elderly.

.Develop civil clinic.

a. Establish contacts, resources, case priorities, method of case selection and case review.

QUALIFICATIONS: .Must have a license to practice law in Florida.

.Minimum of three years legal experience.

.Administrative and supervisory experience preferred.

.Appropriate academic background.

OPENING: August, 1985

SALARY: D.O.E.

APPLICATIONS: Send resume, writing sample and three references to:

Ronald B. Halpern, Director-Civil Clinic
Stetson University College of Law
1401 - 61st St. South
St. Petersburg, Florida 33707

An Equal Opportunity Employer

Syracuse

Syracuse University College of Law seeks one attorney to supervise students in the Law Clinic and to assist the Director in the administration and teaching of both clinic and the lawyering skills courses. Minimum 2 years practice experience or clinical experience preferred. Admitted to NY Bar or eligible. Salary negotiable to \$22,000 for a 9 month/academic year appointment. Application deadline July 1, 1985. Send resume to Prof. Joseph A. Barrette, Director, E. I. White Hall, Suite 0044, Syracuse, New York 13210. Affirmative action/equal opportunity employer.

Texas Southern

The Clinical Legal Studies Program of Thurgood Marshall School of Law of Texas Southern University has just been awarded a two-year grant by the Legal Services Corporation to establish an Elderly Law Clinic. We are seeking an individual to be responsible for the implementation and operation the new clinical offering. The successful applicant will be appointed to the faculty with the rank of visiting assistant professor for the period of one year, with the possibility of renewal for the second year of the grant. As the grant period commences July 1, 1985, we are anxious to make our selection as soon as possible. If interested, please mail a letter of interest, resume, writing sample and list of references to Professor J. P. Ogilvy, Thurgood Marshall School of Law, Texas Southern University, 3100 Cleburne, Houston, Texas 77004. Please indicate your earliest date of availability. If you have any questions, Professor Ogilvy may be reached by phone at 713/527-7275.

ESSAYS

The essays in this issue of the Newsletter are devoted to an issue often neglected in discussions among clinical teachers - the internship clinic. Judging by the content of Section programs, an outside observer would scarcely realize that a large number of the clinical programs in this country are of the farm out variety. These two essays are designed to at least partially ameliorate this neglect. (See ABA Skills Training Committee article for further information about this topic).

OUT-OF-HOUSE CLINICAL PLACEMENTS: OUT OF SIGHT, OUT OF MIND?

By
Janet Motley, California Western

The Out-of-House clinical placement program has long been treated as the step-child of legal education, ignored by its parents, the law school and legal educators, much as the wicked step-parents of our childhood fabels mistreated young heroes and heroines. Many, in fact, might prefer to label it the "out-house" clinical program. Rather than spend this limited space conjecturing about the reasons

for this situation, I felt it might be more productive to examine the child itself.

As the director of a clinical program which consists entirely of out-of-house placements (referred to as internships), I am prepared to defend its right to a more prominent position in legal education. At the same time, I intend to be frank about the problems which are involved in running such a program. It is my hope that this article might inspire further dialogue and collaborative endeavors to improve and build upon existing foundations.

As legal educators our foremost consideration should be: "What is the educational value of allowing a student to work for credit outside of the school under the supervision of an attorney who is not employed by the school and who is not a professional educator?" The answer to this question is determined by what our students will learn in these situations, and is, obviously, a "mixed bag." By virtue of their very presence in the law office, courtroom, agency, etc., students will learn many things. Observation is a powerful learning device. Unfortunately, as we know, much of what can be observed in a law office or courtroom is not of the quality which we would like our students to learn. Thus, one danger lies in the fact that our students may be exposed to poor lawyering, that this behavior might serve as a role model for our students, and that they might come away from the experience with serious misconceptions about their professional roles and work. To give credit for such an experience would be ludicrous.

Another problem with these internships, in regard to their educational soundness, is that the supervising attorneys probably will not be trained educators. Furthermore, they are unlikely to hold the educational needs of the students as a high priority in carrying out their work. Where supervising attorneys are looking for maximum productivity and minimum time cost from their students, the educational value of the experience must suffer accordingly. Even where the supervising attorneys do take some interest in the educational needs of the students, the attorneys may not be skilled in the methodology which is appropriate to clinical teaching. For instance, an attorney may avoid giving honest and thorough critique for fear of hurting a student's feelings, or an attorney may fail to discuss ethical issues with a student because he/she has become accustomed to dealing with such things on an unconscious level.

Recognizing these major hurdles, nonetheless I would maintain that the potential for learning outside of the school is tremendous. The kinds of experiences available to students surpass the opportunities of even the most expansive in-house programs. Students interested in acquiring experience in almost any area of expertise may do so. For example, we have placed students in offices where they may learn the practice of patent law, medical malpractice, real estate law, corporate law, education law, banking law, international law, etc., in addition to the numerous students who have had opportunities to work within the court systems in judicial internships.

In addition to the variety of placements available, which might be considered a matter of "quantity," there is the matter of "quality." We have found a growing number of attorneys expressing an interest in taking on the role of "mentor" to our students. The internship arrangement is most conducive to this relationship. Although it may be challenging to find this combination of good role model and teacher, we have found no lack. To assure the commitment and quality of our supervising attorneys and of the educational experience to be provided, we employ several screening devices. These include an application and personal interview procedure, a memorandum of agreement, an individualized experience checklist (similar to a learning contract), student and supervisor evaluations and our Supervising Attorneys Training Program. (I have covered these devices in previous presentations for the Section. I would be happy to provide more detailed information upon request.)

That is not the end to the challenge. Even assuming a sufficient number of qualified and willing attorneys to supervise our students, the role of the school in supervising and complementing the work that the students are doing in these internships must be determined. Simply to turn the students over to a trusted, but distant, supervisor for a semester would seem to be unwise. There would be no way to ensure the continued quality of the placement and no way to know just what our students are learning, both in terms of attitudes and skills. There must be some contact with the school. Not only is this contact essential for quality control purposes, but it is also necessary to ensure that our students remember that they are students/learners, and not employees. The role differentiation between employee and student is one well known in legal education. A person who considers him/herself an employee will be less likely to ask questions, to take risks, to insist upon proper supervision and feedback, to request more challenging assignments, to take time from "producing" in order to observe a deposition or a trial, to ask to sit in on a client interview, or to take the time to read an entire case file rather than look up a narrow point of law for the attorney. Students who engage in an internship which is entirely separated from the academic environment are more likely to take on the role of employee than are students who are obligated to report to the educational institution. I have also found that students are more willing to take the aggressive and active role as a learner in a work setting when I remind them that they are paying for the experience.

Given the need for an ongoing relationship between the school and students engaged in out-of-house work, those of us in the "business" have been experimenting with different forms, searching for the most effective. Many of us have tried classroom components, some more successfully than others. Generally there is not a great deal of satisfaction with what that form has produced. Where 25-60 students are each doing very different work, it is difficult to create a classroom component which seems to be relevant for all of them. This is compounded by the fact that many of these students have taken or are taking courses such as trial practice, interviewing and counseling, appellate advocacy and legal drafting, which provide foundations for the skills they are practicing at their work.

I have found that most of my students resist a substantial classroom component. My guess is that their resistance comes from two main positions. First, one of the reasons that students enroll for the internship course is that they are anxious to get out into the "real world." Many have been in school for as long as they can remember and need to be in a new environment. Even many who have been out of school for some time, such as those seeking second careers, have come to be bored, disenchanted or resentful of the process, and do not particularly want to spend their time at the school. Requiring those students to enroll in a two or three unit class as a condition to their internship is just as likely to result in their not taking their internship at all. If they are able to get a paid clerking job, they might consider that to be an equivalent experience and forego the benefits of an internship.

The second reason that students may resist classroom components is that the materials used in them tend to be reflective and intellectual at a level which is foreign to many of our students. This is not to say that the students are not bright enough or reflective enough to appreciate the materials, but rather, that they are unaccustomed to dealing in this way with their law school experience, that they find the process uncomfortable and thus, resist it. Nothing is wrong with discomfort; growth comes from struggling through uncomfortable situations. However, when the discomfort is so great that students turn away from the process rather than work through it, it is nonproductive. I have found that the same ideas which are introduced in some of the traditional classroom materials can be introduced outside of the classroom in ways that stimulate my students.

Many of us have attempted to put together our own materials for a classroom component, often finding that they turn out to be a "hodge-podge" of information without much of a theme. Sometimes, what we as educators consider to be interesting and thought-provoking, does not have the same impact upon our students. We need to find material that touches each student in his/her personal process of professional development. Because each student is at a different place developmentally, this is difficult to do in a group setting.

One answer to this challenge comes through combining materials written for a particular program with individual meetings with interns.¹ It is a labor intensive solution, yet, it is the most successful formula we have tried. The individual meetings with interns allow for personal dialogue geared to promote reflective thinking on the part of the student about his/her work, relations with others, adjustment to professional standards, the legal system and whatever other topics seem to be important to that particular student.

1. I have prepared a set of materials which focuses on the process of learning. The theme for our internship program is the development of effective learning skills. In our meetings with interns, we are able to work with them in relating their personal experiences to the learning theory.

In addition to the individual meetings, there should be occasions when interns can meet together in small groups to discuss their experiences. This exchange provides an opportunity for expanding students' concepts of the role of an attorney. It also provides grist for exciting discussions about professional responsibility, the effectiveness of our legal system, and the quality of lawyering being observed in various arenas. Both the individual and the group meetings allow the internship faculty to learn essential information about what is occurring at the placement law offices.

There are other advantages to the out-of-house placement, many of which might be categorized as psychological. First, students enjoy the opportunity to be away from school. The mere break in the routine of going to classes is an attraction for all kinds of clinical programs, but the absence from "campus" apparently provides an even greater relief. Second, doing work in an office that is not run by the school often seems to be more like the "real world." The students know that these offices have lives of their own and will function with or without the students; that they have a role independent of the educational experience that the students might receive. Thus, the clients and the cases seem more significant. In addition, the supervising attorney is seen as an important contact, either as a prospective employer or a reference on the resume of the intern; this is accompanied by a desire to please which might exceed the desire to receive a good grade.² Third, even students who seem to have turned off to the traditional schooling process see this as an opportunity to start again with a "clean slate." Students who have not performed well according to our academic standards often shine at their internship work. This kind of positive feedback helps to develop self-confidence and improved self-image which are assets in later practice. Fourth, students working in outside law offices and agencies are exposed to caseload and office management situations which might not occur in-house; they learn how to deal with prioritizing, to bill clients, to be involved with local Bar activities, and the numerous other details which must be attended to by practicing attorneys. The supervising attorneys are able to model a more complete lawyering role than can be modeled by a faculty member.

Another significant advantage of the out-of-house program is the position of the internship faculty. Not being responsible for the direct supervision of cases, internship faculty are freer to take time with students for reflective dialogue about the work being performed. Because the students are not working with the faculty advisor, they are more open to discussions about their learning processes, their office relationships, their anxieties and uncertainties, than they would be with their supervising attorneys. The relationship between student and internship faculty is not one of seeking to please, but rather one which is encouraged to be open and thoughtful. Students may challenge decisions made by their supervising attorneys or may

2. This desire also poses a danger that the student will adopt the role of obedient employee rather than that of the questioning student.

express dislike for particular areas of law or skills without risking their relationships with their supervisors. This separation of functions, case supervision and educational supervision, is one of the greatest assets of the out-of-house program. Most students appreciate the opportunity to talk about their work with someone who will be interested and to have a safe place to discuss tangential matters. For a supervising faculty member, the role provides a wonderful opportunity to improve student-faculty relations and to take part in an important maturing process. I find it most rewarding to work closely with students in this way and to observe their reflective abilities in a way which is never known to most teachers.

A natural by-product of the internship program is the promotion of relations with the local bar. This partnership with local practicing attorneys serves as an effective public relations device for the school. These connections are important to the vitality of the school, its reputation in the community and to the welfare of our graduates.

The final area that should be mentioned here is the subject of who should do the job; what kind of people should be working in an out-of-house program. First, these people must be faculty members. If the program is to be taken seriously by both the students and the faculty, it must be staffed with faculty members. The everyday running of the program (correspondence, meeting schedules, etc.) can be run by an administrator/secretary. But the individual and group meetings, the assignments, the screening and training functions, should all be done by faculty members. Finding the right persons among the faculty, who can and will do this work, is a challenge. Many clinical teachers enjoy their work because it allows them to keep an active hand in practice. This is not so for the internship faculty; for us, the relationship to practice is more indirect (although I have dashed to the library with an intern from time to time). To be good at this work, one must really enjoy it; a person who doesn't like to spend a lot of time working directly with students will not create an atmosphere in which students would be likely to disclose much of interest. Also, the job requires a teacher who has enjoyed the practice of law and who can relate with students when they discuss their experiences in the field. Finally, the person must be a good listener. This is, perhaps, the hardest quality to find among law teachers. We all seem to want to tell our students how much we know. Yet, the process works best when reflective listening is employed. Students should be doing at least 80% of the talking in most meetings. Part of being a good listener requires being able to hear those things which are not said - to "read between the lines" - and to comment appropriately about sensitive areas. In addition to these qualities, it is helpful to have faculty members who enjoy working with attorneys and present themselves impressively to supervising attorneys.

Once the right faculty members are found, something must be done to prevent burnout. Because the job is so labor intensive, burnout can occur within a couple of years. One partial safeguard is a combination of intern supervision and classroom work, providing for a change of pace. Another necessity is time-off. Internship faculty

should not work straight through the year. Time away from the program is required if the job is to be approached with the required attention and freshness. Something that we are considering trying at California Western is a rotation system whereby regular faculty members would spend a trimester in the internship program, working with students and perhaps team teaching practicum courses, every few years on a voluntary basis.

It has not been my intention in this article to promote the value of the out-of-house placement over the in-house clinic. Both forms play important roles in the law school. It has been my intention to note some of the positive and negative qualities of out-of-house programs, to discuss some challenges and possible solutions, and to promote dialogue. I look forward to engaging in this dialogue with interested clinicians so that we can continue to develop this important resource.

EXTERNSHIP PLACEMENTS: WHAT VALUE TO THE LAW SCHOOL?

By

Hank Rose, Loyola-Chicago

Loyola University of Chicago School of Law (LU) has operated an externship program for many years. Under this program, upper class students have received academic credit for clerking with judges and working with attorneys in a variety of governmental agencies (e.g. attorney general, state's attorney, public defender).

LU opened an "in-house" legal clinic in 1981. Thirty (30) upper class students have enrolled in the Legal Clinic course each semester. After the legal clinic opened, the externship program continued to operate so that students who could not participate in the Legal Clinic course could receive some clinical experience at LU.

In 1984, the Clinical Education Committee of the LU faculty carefully reviewed the externship program to assess its value to the law school. The committee identified numerous advantages and disadvantages of operating an externship program.

Advantages of Externship Program

1. The externship program has allowed a large number of LU students to receive a clinical experience than could enroll in the Legal Clinic course. Since funding for supervising attorney positions in LU's in-house clinic is limited to three positions, a maximum of 30 students can participate in the Legal Clinic course each semester. This limitation means that a significant number of LU's 700 students will not be able to work in its legal clinic during their law school careers.

The externship program represents the only opportunity for many LU students to obtain a clinical experience. As many as 50 students each semester can participate in externship placements. While the committee concluded that the legal clinic experience was educationally

superior to externship placements because of the academic focus to the students' training, the externship program allows LU to meet its important goal of offering a clinical experience to as many students as possible.

2. The externship program is far less expensive than the legal clinic program. The principal instructors in the externship program, the supervising attorneys and judges at the placement sites, are not compensated by the law school. The law school's only costs to operate the externship program are to provide faculty supervision and administrative support to the program. These expenses represents a small fraction of the costs to operate the legal clinic.

3. The externship program offers students a diverse range of experiences. LU's legal clinic is limited by its staff size to a civil practice encompassing four types of cases (family, housing, government benefits, consumer). The externship program offers students an opportunity to do both civil and clinical work as well as to explore such highly specialized placements as the Internal Revenue Service, Securities and Exchange Commission, National Labor Relations Board, and judicial clerkships.

4. The externship program allows LU to utilize the rich array of legal resources available in the Chicago area to further its educational goals. It begins to break down the insular attitude which many academic institutions exhibit in relation to the local legal community. The increased visibility of LU students enhances the school's image to the bar and the judiciary. LU alumni are given an opportunity to directly participate in the academic function of the law school as externship supervisors.

5. Unlike LU's legal clinic, where caseload pressures on students are closely controlled, externships involve settings where the constraints of full-time legal practice are realistically evident to participating students. Students are exposed to time pressures, working relationships, cost limitations, fee considerations, and ethical concerns which they will confront in their future legal practices.

6. The externship program has a valuable placement dimension for many students and prospective employers. A number of LU students pursue externships to explore future employment opportunities. It is widely known that several legal governmental agencies in the Chicago area prefer to hire law school graduates who have been observed by their own staffs in externship placements. A significant number of former LU students have obtained full-time employment through their externship placements.

7. The externship program should assist LU in relating to an emerging trend which greatly influences the legal training of its students. An increasing number of LU students are obtaining part-time, law-related employment to defray the cost of law school. This employment significantly influences the conception of professional role which students develop prior to graduation.

Much of clinical education involves encouraging students to develop their critical faculties to "learn how to learn" from their own experiences. The externship program as an off-campus clinical program should offer LU faculty insights and methodologies to assist its students to more effectively learn from their present and future law-related employment experiences.

Disadvantages of Externship Placements

1. A fundamental conflict of goals occurs in most externship placements. The law school allows students to be placed in externships to receive an educational experience; most placement agencies seek students to assist with their own large workloads. The commitment on the part of supervising attorneys to provide students with a sound educational experience is problematic. Many of the supervising attorneys are very busy practitioners who simply have little time to devote to teaching. Most of the supervising attorneys expect the trade-off between training students and receiving assistance in their practice to tip in favor of practice.

The leverage which LU has with supervising attorneys to ensure an excellent educational experience for its students is very limited. The supervising attorneys are not compensated financially for their supervision. The primary incentive that most supervisors have to participate in an externship program -- to receive assistance with their own work -- does not ipso facto guarantee high-quality supervision.

2. Most law school clinical instructors have learned that clinical training involves an intensive exploration with students of the discrete elements of the lawyering process. In-house clinical programs are generally structured to allow students to thoroughly reflect upon the lawyering process issues which they confront. Most externship placements are service-oriented settings where formal, in-depth review of the lawyering process cannot be accommodated. Supervisors seldom have the time to expansively explore lawyering process issues with students. Thus, students in externship placements do not benefit from the opportunity for systematic reflection upon their experiences which a clinical setting should afford.

Most instructors in in-house clinical programs seek to integrate theoretical training with client representation. This integration is commonly accomplished through classes and simulations where the theoretical basis of lawyering is analyzed. These theoretical considerations are then related to the client representation which students provide in the clinic. In externship placements, very little formalized integration of theoretical considerations with client representation occurs. The supervising attorneys generally have a wealth of experience and deep insights into the lawyering process but this information is generally offered to students in an anecdotal rather than systematic fashion. The underdeveloped relationship between theory and practice which is involved in most externship placement limits their educational value.

3. The quality of supervision provided in externship placements is uneven. Lawyers are notoriously poor teachers. The lament among young lawyers that they receive inadequate supervision of and feedback about their work is real. To expect significantly better teaching skills from extern supervisors is unrealistic. Thus, the quality of an externship placement will depend to a large extent upon the random chance that the supervising attorney is a skilled and committed teacher.

4. Law school clinical instructors have long struggled with the tension between providing educational training to students and guaranteeing high-quality representation to clients. The relationship in extern placements among student, extern supervisor, and faculty supervisor is a complex one which further confuses this issue. The faculty supervisor is inevitably involved in assessing the quality of supervision and representation provided by the extern supervisor. The student is responsible to two supervisors who may have conflicting interests. The supervising attorney may resent the involvement of an academic in reviewing the quality of legal work product. Clarity of roles between supervisor and student in clinical settings is essential. Such clarity is difficult to achieve in the triangular relationships involved in externship placements.

5. Students who are self-learners will be most adaptable to externship placements. However, not all students will benefit from the relative autonomy inherent in externship placements. Most students in externship placements work very independently. They have limited contact with their supervisors and virtually no contact with students or other peers. Some students can benefit greatly from such settings because their own learning styles are accommodated by autonomy. However, many students need more educational direction and peer interaction than externships can provide.

6. A proliferation of externship programs represents a serious threat to in-house clinical programs. While in-house programs are educationally superior models for clinical training, their relative cost is high. Externships represent an attractively inexpensive method of providing clinical training to law students. As financial pressures on law schools mount, the tendency to adopt extern rather than "in-house" clinical models will likely increase. The ironic result could be a return to the clinical training of law students primarily through the private bar, an approach closely akin to the discredited apprenticeship models of the past. In this process, law schools could lose essential control over the clinical training provided to their students.

CONCLUSION

As a result of LU's evaluation of its externship program, the program was considered to be of sufficient educational value to be continued as a supplement to the in-house legal clinic program. Several modifications in LU's externship program were adopted to

strengthen the program. Increased faculty supervision of placements, learning contracts between students and supervisors, and increased formal evaluation responsibility by supervisors will be implemented in the next year. With these modifications, LU's externship program should prove to be a valuable method of providing clinical training to a large number of LU students.

Field placement at CUNY integrated with doctrinal and lawyering courses.

By Susan Bryant

The program involves every second-year student in an integrated academic and fieldwork program in one of three elective concentrations:

Administrative Regulation and the Accountability of Public and Private Power;
Equality and Inequality and the Role of Law and Lawyers;
Housing and Urban Development.

This program provides students with the opportunity to use the approaches and skills developed during the first three semesters to focus on learning a selected area in depth through both coursework in the classroom and participation in actual legal practice in the field. The learning agenda in each concentration includes theoretical perspectives, doctrinal mastery, professional responsibility considerations, and lawyering skills development.

The fourth semester elective concentration program provides a transition from the carefully controlled learning environment of the first three semesters — with their totally required curriculum, simulation training and "House" system — to the third-year curriculum in which students take elective courses and an integrative lawyering seminar or student practice clinical program. In each concentration three to four faculty members share the responsibility for approximately 45 students' learning experiences for the semester in the classroom and in the field. Each concentration's weekly schedule requires the students to participate in ten to twelve hours of course-work at the Law School and two full days of fieldwork in carefully selected law offices throughout the New York City area.

Each concentration provides students with the following range of course-work:

(1) a three-hour weekly class emphasizing substantive legal developments in the area as a whole;

(2) a two-hour-and-fifteen-minutes weekly lawyering class addressing issues of professional responsibility and lawyering skills raised by the students' field experiences, including their observations of the work and the work context of the offices to which they are assigned;

(3) a two-hour weekly theory seminar emphasizing theoretical perspectives on both the substantive law studied in the legal doctrine course and the practice issues examined in the lawyering classes and raised by the fieldwork;

(4) a one-hour-and-forty-five-minute weekly small group lawyering seminar focusing on lawyering issues raised by the students' work in their fieldwork offices, and;

(5) a one-and-a-half hour weekly or bi-weekly feedback meeting between a faculty member and two to four students working in the same or closely related field placements — monitoring the fieldwork experience, assisting with specific lawyering questions that arise in the fieldwork, and integrating the course-work with the fieldwork.

Each student is also required to spend two full days per week at a field placement handling legal work which involves specific aspects of the substantive and lawyering issues covered in the course-work. The criteria used by the faculty to select the field placements emphasize the quality of the assignments and supervision available to the students from the field supervisors, and the field supervisors' commitment to work closely with the students and their faculty supervisors. The faculty members developed an extensive protocol, "The CUNY Law School 1985 Fieldwork Program: A Cooperative Venture in Legal Education", to distribute to potential fieldwork offices and supervisors.

At the end of the fourth semester, the faculty in each concentration will evaluate each student in the concentration on a six point scale in the six areas of competency used

to evaluate students at the end of each semester at the Law School: Professional Responsibility, Clinical Judgment, Legal Reasoning, Theoretical Perspective, Communication, and Management of Effort. The students' understanding of the substantial reading assignments and classroom presentations will be demonstrated through written exercises about case hypotheticals and writing which integrates the readings and coursework with their fieldwork experiences, as well as their participation in class discussions. Faculty members will evaluate the students' fieldwork based on regular consultation with field supervisors, students' logs and journals, periodic field-site visits, discussions with students, and review of their written work product.

The elective concentration program represents an innovation in law school pedagogy designed to integrate practice and learning through intensive academic work coordinated with carefully supervised fieldwork. The fieldwork component requires every second-year student to work with supervising attorneys under the guidance of CUNY faculty members. Students see how their field supervisors handle their roles and responsibilities in the context of the institutions and legal relations with which they work. Regular meetings with the concentration faculty members provide students with structure and input to reflect on their observations and experiences and to integrate them with their coursework. The limited responsibility that the students (and faculty) have for the actual legal work allows students to participate in cases and projects which are often beyond the capacity or authority of student practice clinical programs. In addition, field placements provide students with the opportunity to become part of the community of practicing lawyers which they want to join upon graduation, establishing contacts and gaining experience which are likely to be extremely helpful in their job searches. As part of a Law School curriculum involving extensive simulation and clinical offerings, we think the elective concentration program offers unique and important learning opportunities. It is a type of pedagogy we hope to refine and perfect over the next few years as we gain further experience developing the academic components, identifying excellent field supervisors, and integrating the course-work with the fieldwork.

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